

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

PATRICK RADER

PETITIONER

VS.

CIVIL ACTION NO. 5:09-cv-106(DCB)(MTP)

EDWARD HARGETT

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on the respondent Edward Hargett's Motion to Dismiss as Moot or, Alternatively, for Failure to Exhaust (**docket entry 26**); the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 28**); and the petitioner Patrick Rader's Motion for Leave to Supplement the Record (**docket entry 31**) and Motion to Compel (**docket entry 32**). Having carefully considered the respondent's motion, the report and recommendation, the petitioner's objections thereto, and the petitioner's subsequent motions, and being otherwise fully advised in the premises, the Court finds as follows:

Before the Court is Patrick Rader's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 8, 2006, Rader pleaded guilty in the Circuit Court of Warren County, Mississippi, to a charge of possession of marijuana. He was sentenced to eight years in the custody of the Mississippi Department of Corrections (MDOC). On February 27, 2008, Rader filed a complaint with MDOC's Administrative Remedy Program (ARP), asserting that his jail time calculation was incorrect in that he

should have been given credit for time served from November 29, 2006, through June 20, 2007, during which he was being held in the Madison County Jail pending trial on federal charges. Rader was denied relief at all three steps of the ARP process. On June 17, 2008, he signed a certificate documenting completion of the ARP process and informing him of his right to seek judicial review within thirty days.

On June 26, 2008, Rader filed a petition in the Circuit Court of Warren County, requesting that the state be ordered to show cause why his state sentence should not be credited with jail time from August 16, 2006 (the date of his arrest on the state charges) to June 20, 2007. On January 23, 2009, the court entered an order transferring Rader's petition to the Circuit Court of Wilkinson County (the county of his incarceration). No further action has been taken on this petition.

On July 27, 2009, the petitioner, through counsel, filed a Petition for Credit on Sentence in the Circuit Court of Issaquena County, seeking credit on his state sentence for November 29, 2006 to June 20, 2007. On August 18, 2009, Rader was released from MDOC custody on parole, and is currently in federal custody. The Circuit Court of Issaquena County entered an Order of Dismissal on December 3, 2009, holding that it lacked jurisdiction since the petitioner was in federal custody and, in the alternative, that the petitioner's claim had been resolved and was moot. The petitioner

did not appeal the ruling.

Rader filed the petition now before this Court on June 25, 2009, alleging that he was denied jail credit toward his state sentence for the period of November 29, 2006 through June 20, 2007, when he was being held in the Madison County Jail pending trial on his federal charges. On August 19, 2009, Rader's sentence was recalculated by MDOC, apparently due to a change in MDOC policy regarding whether an inmate is entitled to credit on a state sentence for the time he is being held pending federal charges. The revised time sheet reflects that the petitioner has been given credit for November 29, 2006 through June 20, 2007, noting that his state sentence began on November 28, 2006.

In his motion to dismiss, the respondent argues that Rader's petition is now moot or, in the alternative, that it should be dismissed without prejudice for failure to exhaust state court remedies. Magistrate Judge Parker, in his Report and Recommendation, finds that the relief sought by the petitioner is moot because he has received the credit toward his sentence that he sought. Further, to the extent that Rader contends he has other claims, the Report and Recommendation finds that the petitioner has failed to exhaust such claims in the state courts. (The Court notes that the petition filed by Rader in the Circuit Court of Warren County, subsequently transferred to the Circuit Court of Wilkinson County, seeks to have his sentence credited with jail

time dating back to August 16, 2006, the date of his arrest on the state charges. Rader has not exhausted this claim in the state courts.) Magistrate Judge Parker recommends that this action be dismissed without prejudice. Although Rader seeks a stay of this action in lieu of dismissal, he has not shown good cause for his failure to exhaust; therefore, he is not entitled to a stay. See Neville v. Dretke, 23 F.3d 474, 479-80 (5th Cir. 2000). Rader's petition has been fully addressed by Magistrate Judge Parker in his Report and Recommendation, and the Court finds nothing in Rader's objections thereto, nor in his subsequent motions, which would cause it to modify the Magistrate Judge's findings. The petitioner's motion to supplement the record shall be granted. The petitioner's motion to compel is moot. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 28**) is adopted as the finding of this Court;

FURTHER ORDERED that the respondent Edward Hargett's motion to dismiss (**docket entry 26**) is GRANTED, and this action shall be dismissed without prejudice in a separate Final Judgment;

FURTHER ORDERED that the petitioner's Motion for Leave to Supplement the Record (**docket entry 31**) is GRANTED, and the record is hereby supplemented with Attachments 31-1 and 31-2;

FURTHER ORDERED that the petitioner's Motion to Compel (**docket entry 32**) is MOOT.

FURTHER ORDERED that the petitioner is not entitled to a Certificate of Appealability, as set forth in the Final Judgment.

SO ORDERED, this the 21st day of October, 2010.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE